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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

JUL 29 2003

File: [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

[REDACTED]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

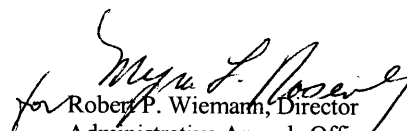
[REDACTED]

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the California Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Romanian Orthodox church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4) in order to employ him as a church choir leader and church composer.

The director denied the petition, finding that the petitioner failed to establish that the offered position constituted a qualifying religious occupation for the purpose of special immigrant classification.

On appeal, counsel asserts that the position of choir director and church composer requires membership in the denomination as a prerequisite to perform the job duties. Counsel further asserts that the performance of the job duties is inextricably intertwined with the religious tenets of the denomination.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The issue to be addressed in this proceeding is whether the petitioner has shown that the offered position is a qualifying religious occupation for the purpose of special immigrant classification.

The term "religious occupation" is defined at 8 C.F.R. § 204.5(m)(2) as follows:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the offered position qualifies as a religious occupation as defined in the regulations. The statute is silent as to what constitutes a "religious occupation," and the regulation states only that it is an activity relating to a traditional religious function.

The Bureau interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is

traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning religious organization.

In the initial I-360 petition, the petitioner described the beneficiary's job duties as follows:

Conduct the church choir. Audition and select members of the group. Write musical compositions using knowledge of harmonic, rhythmic, melodic and tonal structure and other elements of musical theory including instrumental and vocal capability. Prepare the musical notations.

In response to a Bureau request for additional evidence, the petitioner provided the following, expanded description of the beneficiary's duties:

Direct the church choir including audition and selection of the members of the group. Select the 'tipica' for all the church services, including the myneca, penticoaster and ochtoich periods, for all Sundays throughout the year, for the 40 days Nativity and Easter Lent periods with their specific music. Write the music for the choir for the mixed services (part English and part Romanian) for both choir and the cantors, who perform on an individual basis on the feast-days throughout the week. Write the musical compositions using knowledge of harmonic, rhythmic, melodic and tonal structure, and other elements of musical theory including instrumental and vocal capacity. Prepare and deliver musical notification for the whole choir. Write, produce and distribute religious Music materials for special occasions (i.e. CD of Romanian Carols), perform in community concerts.

After a review of the record, it is concluded that the petitioner has not established that the position of choir leader and church composer constitutes a qualifying religious occupation. First, the petitioning church has not shown that the position of choir director/church composer is a traditional full-time salaried occupation within the Romanian Orthodox Church. On appeal, Fr. [REDACTED] states that the beneficiary will also function as a cantor and religious leader and submits entries from the Catholic Encyclopedia from the website

www.newadvent.org/cathen, for the terms "cantor", "choir", "ecclesiastical music", "sacristan", and "sub-deacon." Fr. Alecse has not provided any explanation as to why he failed to mention these additional duties at the time the initial I-360 petition was submitted. The entries from the Catholic Encyclopedia discuss the historic significance of ecclesiastical music and the historic roles of sub-deacons, cantors, and sacristans within the Church. Nowhere is it stated, however, that the position of choir director/church composer, or indeed that of sub-deacon, is traditionally a full-time salaried position within the Romanian Orthodox Church.

Second, the petitioner has not shown that it has ever employed a member of the congregation in this capacity in the past, nor has it given any explanation of its decision to do so at this time.

Third, the petitioner has not shown that the duties of the position are directly related to the religious creed of the denomination. Music is a component of the worship services of many religious denominations, including the Romanian Orthodox Church. However, the performance of music for a religious organization is not considered a qualifying religious occupation for the purpose of special immigrant classification simply because the music is performed in the setting of a religious service. In this case, the petitioner has not submitted sufficient evidence to show that the duties of this particular position are directly related to the creed of the Romanian Orthodox Church. Accordingly, it must be concluded that the petitioner has failed to establish that the offered position constitute a qualifying religious occupation within the meaning of section 101(a)(27)(C) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.